

1 SENATE BILL NO. 389

2 INTRODUCED BY J. SHOCKLEY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT A PEACE OFFICER MAY ENFORCE THE
5 PROVISIONS OF FEDERAL CRIMINAL IMMIGRATION LAW."

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7 WHEREAS, there are an estimated 8 million to 10 million illegal aliens in the United States who have
8 violated federal civil or criminal immigration laws by acts such as entering the United States illegally or remaining
9 in the United States in violation of the terms of their visa; and10 WHEREAS, there are approximately 450,000 "alien absconders" in the United States, these being
11 individuals who have had their day in immigration court and have been ordered by the federal government to
12 leave the United States but have ignored the order to leave; and13 WHEREAS, U.S. Immigration and Customs Enforcement of the U.S. Department of Homeland Security
14 has only approximately 2,000 interior enforcement agents in the United States whose duty it is to enforce U.S.
15 immigration laws other than at the U.S. borders, meaning that the ratio of illegal aliens to interior enforcement
16 agents is 5,000 to 1; and17 WHEREAS, there are approximately 800,000 state and local law enforcement officers in the United
18 States who, if they were to assist in the enforcement of U.S. immigration laws, would be a force multiplier for the
19 enforcement of those laws; and20 WHEREAS, the Ninth Circuit U.S. Court of Appeals held, in *Gonzales v. Peoria*, 722 F.2d 468 (1983),
21 that state and local law enforcement officers may arrest violators of the federal Immigration and Nationality Act,
22 as long as state law does not prohibit the arrest; and23 WHEREAS, on February 5, 1996, the Office of Legal Counsel of the U.S. Department of Justice released
24 a legal opinion concluding that, unless prevented from doing so by state law, state and local law enforcement
25 officers may, upon reasonable suspicion, stop and question and, upon probable cause, arrest an alien for
26 violation of a federal criminal immigration law and may have that same authority for confirmed violations of federal
27 civil immigration law as well; and28 WHEREAS, the Legislature believes that because of the overwhelming numbers of illegal aliens in the
29 United States and the difficulty that the federal government has in dealing with those numbers, state law
30 authorizing the stop and questioning of individuals who may be illegal aliens, and the arrest of illegal aliens,

1 should be clear so that if state or local law enforcement agencies have the resources to assist federal immigration
2 officers, they should be legally able to provide that assistance under state law.

3 THEREFORE, the Legislature intends, in the enactment of [section 1], that Montana statutes clearly
4 provide that the enforcement of federal criminal immigration laws by Montana peace officers be allowed by state
5 law.

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7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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9 NEW SECTION. **Section 1. Enforcement of federal criminal immigration law -- authority of peace**
10 **officer to stop, question, detain, and arrest.** (1) A peace officer may stop an individual for a reasonable period
11 of time for questioning concerning a possible violation of a federal criminal immigration law if the peace officer
12 has a reasonable suspicion that the individual has violated a federal criminal immigration law. A peace officer who
13 has lawfully stopped an individual for questioning or to make an arrest who has a reasonable suspicion that the
14 individual may have violated a federal criminal immigration law may question the individual concerning the
15 individual's compliance with federal criminal immigration law.

16 (2) A peace officer who has lawfully stopped an individual for questioning or to make an arrest may
17 inquire into the immigration status of the individual if the peace officer has a reasonable suspicion that the
18 individual may have violated a federal criminal immigration law.

19 (3) A peace officer who has lawfully stopped an individual for questioning concerning a possible violation
20 of a federal criminal immigration law may detain the individual for a reasonable period of time in order to
21 determine, with the assistance of federal authorities, whether the individual is in violation of a federal criminal
22 immigration law.

23 (4) A peace officer may arrest an individual if the officer has probable cause to believe that the individual
24 has violated a federal criminal immigration law, including the responsibility, under 8 U.S.C. 1304(e), of every alien
25 18 years of age and older to carry with the alien at all times the alien's certificate of alien registration or alien
26 receipt card, the violation of which is a federal misdemeanor.

27 (5) This section is not a limitation upon state enforcement of federal civil immigration law within the state,
28 if allowed under federal and state law.

29 (6) A peace officer, or state or local law enforcement agency, may seek reimbursement for costs of
30 incarceration of an alien pursuant to this section.

